

REMARKS

These remarks and the accompanying amendments are responsive to the final Office Action mailed October 4, 2004 (hereinafter referred to as "the Office Action"). Claims 3-23 were pending at the time of the last examination. By this amendment, Claim 9, 11-19 and 21-23 are additionally cancelled. Accordingly, Claims 3-8, 10 and 20 will be pending if this amendment is entered. The applicants respectfully request entry of these amendments since the amendments only involve cancellation of existing claims. The applicants furthermore request reconsideration of the rejection of Claims 3-8, 10 and 20 in light of the following remarks.

Section 4 of the Office Action rejects Claims 3-5, 8-12 and 17 under 35 U.S.C. 102(e) as being anticipated by United States patent number 6,377,545 issued to Onyiagha (this patent hereinafter referred to as "Onyiagha"). The rejection is moot with regard to cancelled Claims 9, 11, 12 and 17, but stands with respect to Claims 3-5, 8, and 10, of which, Claims 3, 4 and 10 are the only independent claims still pending.

Each of independent Claims 3, 4 and 10 recite carrying out "traffic control of data ... tak[ing] place in a burst mode at a period proper to the data ... such that a cumulative transmission volume in a traffic monitoring period defined by taking account of the proper period does not exceed [an allowed] transmission volume based on a traffic rate."

In page 2 of the Office Action, the Office Action responds to the applicants prior arguments asserting that Onyiagha does not disclose that data transmission described by Onyiagha takes place in a burst mode at a period proper to the data. Specifically, the Office Action responds by asserting that the passage in column 2, lines 49-54 of Onyiagha (hereinafter referred to as "the cited passage") describes a transmission that may usefully be applied to any node which receives "bursty traffic, data transmission taking place in a burst mode at a period

proper to the data, i.e., communications traffic characterized by periods of high intensity separated by intervals of little or no utilization."

However, even if there is some kind of period in the data transmission in Onyiagha, Onyiagha does not disclose carrying out traffic control based on a traffic monitoring period taking account of that period. Therefore, Onyiagha does not disclose this recited feature of each of the independent Claim 3, 4, and 10. Furthermore, dependent Claims 5 and 8 depend from Claim 4, and are thus not anticipated by Onyiagha for at least the reasons provided for Claim 4. Accordingly, withdrawal of the 35 U.S.C. 102(e) rejection of Claims 3-5, 8 and 10 is respectfully requested.

Section 7 of the Office Action rejects Claims 13-16, 18-19 and 20-23 under 35 U.S.C. 103(a) as being unpatentable over Onyiagha in view of United States patent number 5,570,360 issued to Klausmeier et al. (this patent hereinafter being referred to as "Klausmeier"). The rejection is moot with respect to cancelled Claims 13-16, 18-19, and 21-23, but remains with respect to Claim 20.

Claim 20 depends from Claim 3, which recites carrying out "traffic control of data ... wherein said data takes place in a burst mode at a period proper to the data ... the traffic control such that a cumulative transmission volume in a traffic monitoring period defined by taking account of the proper period does not exceed a volume based on a traffic rate." As explained above, this feature is not described by Onyiagha. This feature is likewise not described by Klausmeier. Therefore, the references (even if combined¹) do not teach or suggest all of the recited features of Claim 3, and thus do not teach or suggest all of the recited features of Claim

¹ It is not necessary in order to fully respond to the Office Action to provide arguments against the combination of Onyiagha and Klausmeier since these reference, even if combined, do not teach or suggest all of the recited features of Claim 20. Therefore, the lack of such an argument in this response should not be deemed as acquiescing that the combination is appropriate. The applicants reserve the right to argue against the combination should this become necessitated by future Office Action.

20, which depends from Claim 3. Accordingly, the applicants request withdrawal of the 35 U.S.C. 103(a) rejection of Claim 20.

Therefore, favorable action is respectfully requested. In the event that the Examiner finds remaining impediment to a prompt allowance of this application that may be clarified through a telephone interview, the Examiner is requested to contact the undersigned attorney.

Dated this 7th day of December, 2004.

Respectfully submitted,



Adrian J. Lee
Registration No. 42,785
Attorney for Applicant
Customer No. 022913

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